INDEX

CASES CITED

STATUTES CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

FRED P. WEISSMAN COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit

To the Hon. Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

STATEMENT

The petitioner, Fred P. Weissman Company, a corporation, does hereby petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on the 29th day of November, 1948, pursuant to written opinion filed on said date. This opinion is reported in 170 Fed. (2d) page 952 January 17, 1949, Adv. Sheets, and its Docket number on the records of said Court of Appeals is 10,535.

1. Petitioner, Fred P. Weissman Company, is a corporation engaged in the manufacture of women's coats at its plant near Harrodsburg, Mercer County, Kentucky.

The alleged unfair labor practices occurred within the Sixth Judicial Circuit of the United States and the Court of Appeals for the Sixth Circuit has jurisdiction by virtue of Sec. 10(e) of the National Labor Relations Act.

2. Respondent, National Labor Relations Board, is an agency of the United States created by an Act of Congress July 5, 1935, c. 372, 74th Cong. 1st Session (29 USCA sec. 151, et. seq.) and as amended by an Act of Congress June 23, 1947, c. 120, 80th Cong. 1st Session (29 USCA—1948 CAPP, sec. 151, et. seq.)

3. Respondent, National Labor Relations Board, on August 28, 1947, filed its petition in the United States Circuit Court of Appeals for the Sixth Circuit, seeking enforcement of its order, directing petitioner to cease and desist from discouraging membership in International Ladies Garment Union or any other labor organization of its employees; discharging or otherwise discriminating against any of its employees because they had testified under the Act, and to take other steps as directed by said order which appear at page 2 of the Transcript of Record herein, including an offer to Mildred Purdon Sims of immediate and full reinstatement to her former, or substantially equivalent, position and make her whole for any loss of pay she may have suffered by reason of the alleged discrimination against her.

4. On November 29, 1948, said Court of Appeals entered a decree which recited that "it is now ordered, adjudged and decreed by this Court that the decree of the National Labor Relations Board be, and the same is enforced."

On December 20, 1948, petitioner filed its petition for rehearing and on January 3, 1949, said petition was de-

nied. On January 24, 1949, said Court of Appeals entered an order staying mandate in this action sixty days from said date pending application of petitioner to the Supreme Court of the United States for Writ of Certiorari and further providing that if said application is made within sixty days, the said stay shall operate until final disposition of this case in the Supreme Court.

REASONS FOR THE ALLOWANCE OF THE WRIT

The Court of Appeals for the Sixth Circuit has decided the following important question arising under federal law, to-wit: National Labor Relations Act, which has not been, but should be, clearly settled by the Supreme Court of the United States: Where an employee, without knowledge on the part of employer, is excluded from a plant by the wholly voluntary action of a large group of fellow employees who strenuously oppose said employee's reinstatement, what affirmative duty, if any, does the employer owe employee under National Labor Relations Act.

It is submitted that the question herein presented by your petitioner for Writ of Certiorari is of sufficient importance to be reviewed by this Court.

PRAYER FOR WRIT

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari issue directed to the United States Court of Appeals for the Sixth Circuit commanding said Court to certify and send to this Court a full and complete Transcript of the Record and of the proceedings of said Court of Appeals had in the above-styled action; that said action be reviewed and determined by this Court as provided by the statutes of the United States and that the decree of said Court of Appeals herein be re-

versed by this Court and for such further relief as the Court may deem proper.

Dated: Lexington, Kentucky. March 12, 1949.

FRED P. WEISSMAN COMPANY,
Petitioner,

By RICHARD C. STOLL,
Counsel for Petitioner.

STOLL, KEENON & PARK,
602 Bank of Commerce Bldg.,
Lexington, Kentucky,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

FRED P. WEISSMAN COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

We have already set out in the petition a statement of the grounds on which the jurisdiction of this Court is invoked and have specified the error claimed by the petitioner.

STATEMENT

We shall now briefly relate the particular facts of this case which we believe to be material to the consideration of the question presented.

The present case is a small branch of a companion action, Court of Appeals Docket 10,536, also now before this Court on a like petition between the same parties, both of which were argued and submitted together and decided in one opinion by the Court of Appeals.

Mildred Purdon Sims was employed by petitioner in the finishing department of its plant in Mercer County, Kentucky, from April, 1945, until March, 1946. A short

time after Union leaders followed Weissman from Lawrenceburg, Indiana, to Harrodsburg, Kentucky, as more fully related in our brief in said companion case No. 10,536, Sims and four other women employees of the Weissman plant became sympathizers with and, perhaps, actual participants in the Union activities against Weissman. In September, 1945, a large group of women employees who had become incensed at the outrageous efforts to drive Weissman out of Harrodsburg and alarmed at the fact that this effort, if successful, would cost them their jobs, forcibly excluded the other four girls from the plant. On March 7, 1946, they notified Sims not to come back to work. However, Sims did return to the plant on the following day, without molestation, and obtained her pay check. At her request, she also received a refund on her deposit and she never thereafter at any time presented herself at the plant to go to work. In fact, there is nothing anywhere in the record that Sims ever at any time actually desired re-employment, unless such inferenece may be drawn from the fact that an organizer of the Union undertook to intercede in her behalf after the date upon which she left the plant.

Later a proceeding for her reinstatement at the Weissman plant was brought before the National Labor Relations Board and, as stated in the petition herein, the Board found that petitioner had committed an unfair labor practice in failing to offer Sims reinstatement at the plant and her reinstatement was ordered. This decree was affirmed by the Court of Appeals in the instant case.

ARGUMENT

We shall, as concisely as possible, under this heading attempt to state our argument in support of our contention with respect to the error assigned.

The testimony taken at the hearing in this particular case may be found at page 38, et. seq. of Transcript of Record herein, and further facts shedding light upon the circumstances surrounding this case are set out at pages 301, 307-308, 310, 317-318, 356, 358, 394, 457-458 of the Transcript of Record of the companion case, No. 10,536, now before this Court.

As the statement of facts show and as the evidence in this case and the companion case, cited above, proves, Sims incurred the almost unanimous enmity of the employees of the Weissman plant by reason of her association with the persons who proclaimed both orally and in writing that they proposed to drive Weissman out of Harrodsburg and close his plant. The employees of this plant earning high wages did not need to remind themselves that before Weissman came to Harrodsburg most of them had been wholly unemployed.

As a matter of self-preservation, they were deeply concerned in protecting their own jobs. What happened is a natural reaction of human nature. If the Union leaders and their friends, which consisted almost exclusively of Sims and four other women employees, were trying to dry up their livelihood at its source by the ruining of Weissman, then they would take vigorous counteraction themselves. And they did. They got rid of the four women employees and then got rid of Sims. There is not the slightest evidence that Weissman or any person connected with him to any extent whatsoever took any part

in or even had any knowledge of the expulsion of the Sims girl until it had happened.

What should Weissman have done with reference to the reinstatement of Sims? Uncontradicted statements in the Transcript of Record show that a desire for harmony in the plant and not Union affiliation was the cause of Weissman's refusal to reinstate. (Transcript 78).

The Board held, as did the Court of Appeals, that Weissman was required to reinstate this employee under the decisions of the *National Labor Relations Board* v. *Hudson Motor Car Company*, 128 Fed. (2d) 528, and *National Labor Relations Board* v. *General Motors Corp.*, 116 Fed. (2d) 306, both from the Seventh Circuit, and *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 Fed. (2d) 331 from the Sixth Circuit. These decisions seem to sustain the harsh and unworkable rule that an employer, who has had no part in an argument or a state of feeling existing between an employee and practically all of the other employees of a plant, must take the part of the single employee and protect the employment of such employee even though—by so doing—he will create much greater and more bitter dissention and controversy in his organization, perhaps, to the utter and complete disruption of the plant itself. Despite the fact, as admitted here, the employer's sole desire is for harmony in the operation of his business, he must incur the enmity of many in order that he may earn the approval of one!

CONCLUSION

We do not believe that this Court will approve such an untenable position, but that this Court will agree that the question of the extent to which an employer must go in

order to reinstate an employee who has lost a job through no fault whatever on the part of the employer, is one that has not yet been decided by the Supreme Court and that it is of such vital consequence that it should be definitely and finally decided in this case.

For the foregoing reason we urge upon this Court that the Writ of Certiorari prayed for in the petition herein be granted.

Respectfully submitted,

FRED P. WEISSMAN COMPANY,
Petitioner,

By RICHARD C. STOLL,
Counsel for Petitioner.

STOLL, KEENON & PARK,
602 Bank of Commerce Building,
Lexington, Kentucky,
Of Counsel.